IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

Crl.Rev.Pet.No. 4399 of 2006(D)

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CRA.265/2003 of ADDL.SESSIONS COURT (ADHOC), KASARAGOD
CC.544/2000 of JUDL. MAGISTRATE OF FIRST CLASS-II, HOSDRUG

REVN. PETITIONER: APPELLANT/ACCUSED

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P.MOHAMMEDKUNHI, AGED 48 YEARS,
S/O.KUNHAMMED, HUDHA TRAVELS,
BENDICHAL, THEKKIL POST, KASARAGOD.

BY ADV. SRI.SAJEEV KUMAR K.GOPAL
SRI.BINOY VASUDEVAN

RESPONDENTS: STATE AND COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. V.SREEJAYAN, AGED 28 YEARS,
S/O.KARUVAN, R/AT UDAYAMANGALAM,
P.O.UDUMA, HOSDURG TALUK, KASARAGOD DT.

BY PUBLIC PROSECUTOR SHRI KAMMAPPU R1

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 05/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**K. PADMANABHAN NAIR, J.**

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CRL. R.P. NO. 4399 OF 2006

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Dated this the 5th day of February, 2007

**O R D E R**

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Revision petitioner is the accused in C.C. No.544 of 2000 on the file of the Judicial First Class Magistrate, No.II, Hosdurg. Revision Petitioner was found guilty of an offence punishable under Section 138 of the Negotiable Instruments Act, convicted and sentenced to undergo simple imprisonment for six months and to pay a sum of Rs.1,20,000/- as compensation. In default of payment of compensation, petitioner was directed to undergo simple imprisonment for a further period of three months. Revision petitioner filed Crl. Appeal No. 265 of 2003 before the Sessions Court, Kasargod, challenging the said conviction and sentence. Learned Sessions Judge concurred with the findings of the learned Magistrate and dismissed the appeal. Hence this Criminal Revision Petition.

2. Learned counsel for the petitioner has argued before me that the finding that petitioner is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act is

not legal and proper. It is argued that courts below have not considered whether ingredients to constitute the offence under Section 138 of the Negotiable Instruments Act were established in this case.

3. When the petitioner appeared before the learned Magistrate, copies of the relevant documents were furnished to him. Substance of the offence was read over and explained to him. He understood the same and pleaded not guilty. On the side of prosecution P.W.1 was examined and Exhibits P1 to P6 proved and marked. After prosecution evidence was over, he was questioned under Section 313 Cr.P.C. He denied all the allegations levelled against him. But no defence evidence was adduced.

4. Second respondent filed a complaint alleging that revision petitioner borrowed an amount of Rs.1,20,000/- from him and issued Exhibit P2 cheque. He gave evidence to the effect that cheque was issued in discharge of a legally recoverable debt. Both the courts had accepted his evidence and found that cheque was issued in discharge of a legally recoverable debt. That is a finding of fact based on good evidence. Evidence was

that when the cheque was presented for collection, the same was dishonoured and returned for want of sufficient funds in the account maintained by revision petitioner with the Bank. On receipt of the dishonour memo, second respondent issued a notice informing dishonour and demanding repayment of the amount covered by the cheque. But the amount was not repaid. So the findings of the courts below that petitioner is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act is correct and does not call for any interference. In confirm the same.

5. Learned counsel appearing for the petitioner argued that sentence imposed is highly excessive and harsh. Petitioner was sentenced to undergo simple imprisonment for six months. Considering the entire facts and circumstances of the case, I am of the view that the substantive sentence imposed on the petitioner in this case can be modified and reduced to imprisonment till rising of the court. But I do not find any reason to interfere with the compensation ordered. Default sentence ordered can also be modified and reduced to one month. Petitioner can be given six months' time to appear before the

Magistrate for receiving the sentence and also to pay the compensation ordered. In the result, Criminal Revision Petition is disposed of in the following manner:

Findings of the courts below that the revision petitioner is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act is confirmed. Conviction is also confirmed. Substantive sentence of simple imprisonment for six months is modified and reduced to imprisonment till rising of the court. Compensation awarded is also confirmed. Default sentence is modified and reduced to one month. Petitioner is given six months' time from today to pay the compensation ordered and to receive the sentence imposed. If the petitioner commits default in complying the with the above conditions, Magistrate can execute the sentence imposed after the expiry of six months from today.

**K. PADMANABHAN NAIR, JUDGE.**

**vsv**

**K. PADMANABHAN NAIR, J.**

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**CRL. R.P. NO.**

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O R D E R

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4TH JANUARY, 2007